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22  
23 **UNITED STATES DISTRICT COURT**  
24  
25 **SOUTHERN DISTRICT OF CALIFORNIA**

26  
27 **THERMOLIFE INTERNATIONAL, LLC**

28 Plaintiff,

vs.

1  
2 JOHN'S LONE STAR DISTRIBUTION,  
3 INC. d/b/a LONE STAR  
4 DISTRIBUTION,

5 Defendant.

6 Case No. **'13CV2171 H RBB**

7 **COMPLAINT FOR PATENT**  
8 **INFRINGEMENT**

9 **JURY TRIAL DEMANDED**

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1 Plaintiff Thermolife International, LLC ("Plaintiff") hereby alleges for its  
2 Complaint against John's Lone Star Distribution, Inc. d/b/a Lone Star Distribution  
3 ("Defendant"), on personal knowledge as to its own activities and on information  
4 and belief as to the activities of others, as follows:

5 **I. THE PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under  
7 the laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice,  
8 California, 90291.

9 2. Plaintiff is and was at all relevant times the exclusive licensee of the  
10 following United States Patents:

- 11 a. Patent No. 6,646,006, titled "Enhancement of Vascular Function  
12 By Modulation of Endogenous Nitric Oxide Production or  
13 Activity";  
14 b. Patent No. 6,117,872, titled "Enhancement of Exercise  
15 Performance by Augmenting Endogenous Nitric Oxide Production  
16 or Activity";  
17 c. Patent No. 5,891,459, titled "Enhancement of Vascular Function  
18 By Modulation of Endogenous Nitric Oxide Production or  
19 Activity"; and  
20 d. Patent No. 7,452,916, titled "Enhancement of Vascular Function  
21 By Modulation of Endogenous Nitric Oxide Production or  
22 Activity."

23 3. The above patents are and were owned by The Board of Trustees of  
24 the Leland Stanford Junior University ("Stanford University") and Plaintiff  
25 exclusively licenses and licensed the patents from Stanford University.

26 4. The above patents are referred to herein as the "patents in suit."

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1       5. Plaintiff has been given the right by Stanford University to institute  
 2 suit with respect to past, current, and future infringement of the patents in suit,  
 3 including this suit against Defendant.

4       6. Defendant is a corporation organized and existing under the laws of  
 5 Texas with a place of business at 11370 Pagemill Road in Dallas, Texas, 75243.

6           **II. JURISDICTION AND VENUE**

7       7. This is an action for patent infringement arising under the patent laws  
 8 of the United States, Title 35 of the United States Code. Accordingly, this Court has  
 9 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

10      8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and  
 11 1400.

12      9. This Court has personal jurisdiction over Defendant. By way of  
 13 example and without limitation, Defendant, directly or through intermediaries  
 14 (including distributors, retailers, and others), ships, distributes, advertises, markets,  
 15 offers for sale, and/or sells dietary supplement products that infringe on one or  
 16 more claims of the patents in suit (hereinafter the “accused products”), which  
 17 include without limitation products sold under the “RPM,” “1 M.R.,” “Speed Stack  
 18 Pumped NO,” “Advanced Strength N.O. Xplode,” “Nitrix,” “Nitric Boost,”  
 19 “Essential Amino Energy Chewables,” “Optii-Pump N.O.,” “Monster Pump,”  
 20 “Force Factor,” “Body Rush,” “Super Pump 250,” “PlasmaJet,” “Nitraflex,” “Sonic  
 21 Pump,” “Jet Mass,” “JetFuse NOX,” “Anavar,” “Zencore Plus,” “I-GH-1,” “Dark  
 22 Rage,” “NO2 Black Full Cycle,” “NO2 Red Hemo Surge,” “NO2 Red,” “Black  
 23 Powder,” “EO2 Vmax,” “Nitro Fire,” “AAKG (PrimaForce),” “V-12 Turbo,”  
 24 “AAKG (SAN),” and “VasoCharge” brand names, in the United States, the State of  
 25 California, and the Southern District of California.

26      10. By way of further example and without limitation, Defendant has  
 27 purposefully and voluntarily placed the accused products into the stream of  
 28 commerce with the expectation that they will be purchased in the Southern District

1 of California, and the products are actually purchased in the Southern District of  
 2 California.

### 3           **III. THE DEFENDANT'S INFRINGEMENTS**

4       11. Defendant has committed the tort of patent infringement within the  
 5 State of California, and more particularly, within the Southern District of  
 6 California, by virtue of the fact that Defendant has shipped, distributed, advertised,  
 7 offered for sale, and/or sold the accused products in this District, and continues to  
 8 do so.

#### 9           **A. DIRECT INFRINGEMENTS**

10      12. Defendant's employees, agents, representatives and other persons  
 11 sponsored by or who endorse Defendant and Defendant's products in advertising  
 12 and marketing activities, have taken, used, and orally administered the accused  
 13 products.

14      13. The accused products are shipped, distributed, advertised, offered for  
 15 sale, and sold by Defendant to include certain ingredients that, by virtue of their  
 16 inclusion in the products, infringe one or more claims of one or more of the patents  
 17 in suit.

18      14. The accused products are shipped, distributed, advertised, offered for  
 19 sale, and sold by Defendant to include specific ingredients for certain purposes that,  
 20 by virtue of their inclusion in the products for such purposes, infringe one or more  
 21 claims of one or more of the patents in suit, and as a result, when Defendant's  
 22 employees, agents, representatives and other persons sponsored by or who endorse  
 23 Defendant and Defendant's products in advertising and marketing activities orally  
 24 administer the accused products, they are practicing and they practiced the methods  
 25 disclosed in those claims.

26      15. The purposes for which these ingredients are included in the accused

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products are and were, without limitation, to enhance nitric oxide production, to improve nitric oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to enhance physical performance.

4        16. Defendant encouraged and/or is aware of the fact that its employees,  
5 agents, representatives and other persons sponsored by Defendant or who endorse  
6 Defendant and Defendant's products in advertising and marketing activities orally  
7 administered and administer the accused products and practice and practiced the  
8 methods disclosed in one or more claim of one or more of the patents in suit, and  
9 these employees, agents, representatives and other persons sponsored by Defendant  
10 or who endorse Defendant and Defendant's products in advertising and marketing  
11 activities are and were acting under Defendant's direction and control when  
12 practicing those methods.

13        17. Therefore, Defendant is and was a direct infringer of one or more  
14 claims of one or more of the patents in suit, and Defendant practices and practiced  
15 the methods as set forth in one or more claims of one or more of the patents in suit.

## **B. INDIRECT INFRINGEMENTS**

17        18. End-users of Defendant's accused products were and are also direct  
18 infringers of one or more claims of one or more of the patents in suit.

19        19. End-users of Defendant's accused products have taken, used, and  
20 orally administered the accused products.

21        20. The accused products are and were shipped, distributed, advertised,  
22 offered for sale, and/or sold by Defendant to include certain ingredients that, by  
23 virtue of their inclusion in the products, infringe and infringed one or more claims  
24 of one or more of the patents in suit.

25        21. The accused products are and were shipped, distributed, advertised,  
26 offered for sale, and/or sold by Defendant to include specific ingredients for certain  
27 purposes that, because of their inclusion in the products for such purposes, infringe  
28 and infringed one or more claims of one or more of the patents in suit, and as a

1 result, when end-users of Defendant's accused products orally administer and  
2 administered the accused products, they are and were practicing the methods  
3 disclosed in those claims.

4       22. Defendant's labels and advertising for the accused products explain  
5 and explained the elements and essential elements of one or more of the methods  
6 disclosed in the patents in suit, and those labels and advertising statements  
7 encourage, urge, and induce the accused products' end-users, and did so in the past,  
8 to purchase and orally ingest the products to practice those methods, and end-users  
9 do and did practice those methods.

10      23. Defendant has therefore specifically intended to cause these end-users  
11 to directly infringe the claimed methods of these patents, and in fact urged them to  
12 do so.

13      24. The accused products are and were not suitable for non-infringing  
14 uses, and none of Defendant's labels or advertisements for the accused products  
15 disclose or disclosed any uses for the products, nor for the compounds disclosed in  
16 the claimed methods of the patents in suit, that do not infringe upon such methods.

17      25. The inclusion of the specific infringing compounds in the products is  
18 and was material to practicing such methods.

19      26. Defendant has and had knowledge that the accused products are and  
20 were especially adapted by end-users of the products for the practicing of such  
21 methods, and, indeed, Defendant encourages, urges, and induces the accused  
22 products' end-users to purchase and orally administer the accused products to  
23 practice such methods, and has done so in the past.

24      27. Defendant intentionally and knowingly induced, encouraged, and  
25 urged end-users of the accused products to purchase and orally administer the  
26 accused products for the purposes of practicing the claimed methods, by having  
27 them orally ingest the compounds disclosed in such claims.

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1       28. Defendant has and had knowledge of the fact that the accused  
2 products, particularly as administered, infringe on one or more claims of the patents  
3 in suit.

4       29. Defendant has and had direct, firsthand knowledge of the patents in  
5 suit.

6       30. For example and without limitation, Plaintiff believes Defendant has  
7 had knowledge of the patents in suit since November 2006, when an ongoing  
8 settlement of a patent infringement case relating to at least some of the patents in  
9 suit against Herbalife, a well-known company in Defendant's industry, was  
10 announced in press releases issued in a highly publicized manner. Plaintiff believes  
11 Defendant's employees, agents, and representatives saw the press releases and were  
12 aware of the settlement and thus the patents in suit.

13      31. By way of further example and without limitation, Defendant sold its  
14 products through retailers, including online retailers, and those retailers have sold  
15 other companies' products whose labels and/or advertisements have been  
16 prominently marked with one or more of the patents in suit, by patent number,  
17 including without limitation, upon information and belief, the products  
18 manufactured and sold by Herbalife, Daily Wellness, and Vitality Research Labs.  
19 Defendant's employees, agents, and representatives have seen these labels and  
20 advertisements and, thus, Defendant has and had direct knowledge of the patents in  
21 suit.

22      32. Defendant brazenly and willfully decided to infringe the patents in suit  
23 despite knowledge of the patents' existence and its knowledge of the accused  
24 products' infringements of the patents.

25      33. At a minimum, and in the alternative, Plaintiff pleads that Defendant  
26 willfully blinded itself to the infringing nature of the accused products' sales.

27      34. Defendant did not cease its own direct infringement, nor its  
28 contributory infringement or inducement of infringement by end-users, despite its

1 knowledge of the patents in suit and the end-users' infringing activities with respect  
 2 to the patents in suit.

3 **IV. FIRST CAUSE OF ACTION**

4 **Infringement of U.S. Patent No. 6,646,006**

5 35. Plaintiff repeats and re-alleges the allegations of the foregoing  
 6 paragraphs of this Complaint as if fully set forth herein.

7 36. Defendant has in the past literally and directly infringed or directly  
 8 infringed under the doctrine of equivalents one or more claims of United States  
 9 Patent No. 6,646,006 by making, using, selling, and offering for sale the accused  
 10 products, or any one of those products.

11 37. In addition to the fact that Defendant uses, sells, and offers for sale the  
 12 accused products, and did so in the past, further examples of Defendant's direct  
 13 infringements include, without limitation, the fact that Defendant encouraged  
 14 and/or is aware of the fact that its employees, agents, representatives and other  
 15 persons sponsored by or who endorse Defendant and Defendant's products in  
 16 advertising and marketing activities orally administer the accused products and  
 17 practice the methods disclosed in one or more claims of United States Patent No.  
 18 6,646,006, and these employees, agents, representatives and other persons  
 19 sponsored by or who endorse Defendant and Defendant's products in advertising  
 20 and marketing activities acted under Defendant's direction and control when  
 21 practicing those methods.

22 38. Defendant encouraged and was aware of these persons' oral  
 23 administration of the accused products for these purposes, these persons are acting  
 24 under Defendant's direction and control, and therefore Defendant directly practiced  
 25 the methods disclosed in United States Patent No. 6,646,006.

26 39. End-users of Defendant's accused products were also direct infringers  
 27 of one or more claims of United States Patent No. 6,646,006.

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1       40. End-users of Defendant's accused products have taken, used, and  
2 orally administered the accused products.

3       41. The accused products were shipped, distributed, advertised, offered for  
4 sale, and sold by Defendant to include certain ingredients that, by virtue of their  
5 inclusion in the products, infringed one or more claims of United States Patent No.  
6 6,646,006.

7       42. The accused products were shipped, distributed, advertised, offered for  
8 sale, and sold by Defendant to include specific ingredients for purposes that, by  
9 their inclusion in the products for such purposes, infringed one or more claims of  
10 United States Patent No. 6,646,006, and as a result, when end-users of Defendant's  
11 accused products orally administered the accused products, they were practicing the  
12 methods disclosed in one or more claims of that patent.

13       43. Defendant's labels and advertising for the accused products explained  
14 the elements and essential elements of the methods disclosed in United States  
15 Patent No. 6,646,006, and those labels and advertising statements encouraged,  
16 urged, and induced the accused products' end-users to purchase and orally ingest  
17 the products to practice those methods, and end-users did practice those methods.

18       44. Defendant therefore specifically intended to cause these end-users to  
19 directly infringe the claimed methods of United States Patent No. 6,646,006, and  
20 had in fact urged them to do so.

21       45. The accused products were not suitable for non-infringing uses, and  
22 none of Defendant's labels or advertisements for the accused products disclosed  
23 any uses for the products, nor for the compounds disclosed in the claimed methods,  
24 that did not infringe upon such methods.

25       46. The inclusion of these specific infringing compounds in the products  
26 was material to practicing such methods.

27       47. Defendant had knowledge that the accused products were especially  
28 adapted by end-users of the products for the practicing of such methods, and,

1 indeed, Defendant encouraged, urged, and induced the accused products' end-users  
 2 to purchase and orally administer the accused products to practice such methods.

3       48. Defendant intentionally and knowingly induced, encouraged, and  
 4 urged end-users of the accused products to purchase and orally administer the  
 5 accused products for the purposes disclosed in one or more claims of United States  
 6 Patent No. 6,646,006, by having them orally ingest the compounds disclosed in  
 7 such claims.

8       49. Defendant had knowledge of the fact that the accused products,  
 9 particularly as administered, infringed on one or more claims of United States  
 10 Patent No. 6,646,006.

11       50. Defendant also had direct, firsthand knowledge of United States Patent  
 12 No. 6,646,006 itself.

13       51. Defendant's activities were without express or implied license by  
 14 Plaintiff.

15       52. As a result of Defendant's acts of infringement, Plaintiff suffered and  
 16 will continue to suffer damages in an amount to be proved at trial.

17       53. Defendant's past infringements and/or continuing infringements have  
 18 been deliberate and willful, and this case is therefore an exceptional case, which  
 19 warrants an award of treble damages and attorneys' fees in accordance with 35  
 20 U.S.C. § 285.

## 21                   V. SECOND CAUSE OF ACTION

### 22                   Infringement of U.S. Patent No. 5,891,459

23       54. Plaintiff repeats and re-alleges the allegations of the foregoing  
 24 paragraphs of this Complaint as if fully set forth herein.

25       55. Defendant has in the past literally and directly infringed or directly  
 26 infringed under the doctrine of equivalents one or more claims of United States  
 27 Patent No. 5,891,459 by making, using, selling, and offering for sale the accused  
 28 products, or any one of those products.

1       56. In addition to the fact that Defendant uses, sells, and offers for sale the  
2 accused products, and did so in the past, further examples of Defendant's direct  
3 infringements include, without limitation, the fact that Defendant encouraged  
4 and/or is aware of the fact that its employees, agents, representatives and other  
5 persons sponsored by or who endorse Defendant and Defendant's products in  
6 advertising and marketing activities orally administer the accused products and  
7 practice the methods disclosed in one or more claims of United States Patent No.  
8 5,891,459, and these employees, agents, representatives and other persons  
9 sponsored by or who endorse Defendant and Defendant's products in advertising  
10 and marketing activities acted under Defendant's direction and control when  
11 practicing those methods.

12       57. Defendant encouraged and was aware of these persons' oral  
13 administration of the accused products for these purposes, these persons are acting  
14 under Defendant's direction and control, and therefore Defendant directly practiced  
15 the methods disclosed in United States Patent No. 5,891,459.

16       58. End-users of Defendant's accused products were also direct infringers  
17 of one or more claims of United States Patent No. 5,891,459.

18       59. End-users of Defendant's accused products have taken, used, and  
19 orally administered the accused products.

20       60. The accused products were shipped, distributed, advertised, offered for  
21 sale, and sold by Defendant to include certain ingredients that, by virtue of their  
22 inclusion in the products, infringed one or more claims of United States Patent No.  
23 5,891,459.

24       61. The accused products were shipped, distributed, advertised, offered for  
25 sale, and sold by Defendant to include specific ingredients for purposes that, by  
26 their inclusion in the products for such purposes, infringed one or more claims of  
27 United States Patent No. 5,891,459, and as a result, when end-users of Defendant's  
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1 accused products orally administered the accused products, they were practicing the  
2 methods disclosed in one or more claims of that patent.

3       62. Defendant's labels and advertising for the accused products explained  
4 the elements and essential elements of the methods disclosed in United States  
5 Patent No. 5,891,459, and those labels and advertising statements encouraged,  
6 urged, and induced the accused products' end-users to purchase and orally ingest  
7 the products to practice those methods, and end-users did practice those methods.

8       63. Defendant therefore specifically intended to cause these end-users to  
9 directly infringe the claimed methods of United States Patent No. 5,891,459, and  
10 had in fact urged them to do so.

11       64. The accused products were not suitable for non-infringing uses, and  
12 none of Defendant's labels or advertisements for the accused products disclosed  
13 any uses for the products, nor for the compounds disclosed in the claimed methods,  
14 that did not infringe upon such methods.

15       65. The inclusion of these specific infringing compounds in the products  
16 was material to practicing such methods.

17       66. Defendant had knowledge that the accused products were especially  
18 adapted by end-users of the products for the practicing of such methods, and,  
19 indeed, Defendant encouraged, urged, and induced the accused products' end-users  
20 to purchase and orally administer the accused products to practice such methods.

21       67. Defendant intentionally and knowingly induced, encouraged, and  
22 urged end-users of the accused products to purchase and orally administer the  
23 accused products for the purposes disclosed in one or more claims of United States  
24 Patent No. 5,891,459, by having them orally ingest the compounds disclosed in  
25 such claims.

26       68. Defendant had knowledge of the fact that the accused products,  
27 particularly as administered, infringed on one or more claims of United States  
28 Patent No. 5,891,459.

69. Defendant also had direct, firsthand knowledge of United States Patent No. 5,891,459 itself.

70. Defendant's activities were without express or implied license by Plaintiff.

71. As a result of Defendant's acts of infringement, Plaintiff suffered and will continue to suffer damages in an amount to be proved at trial.

72. Defendant's past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

## **VI. THIRD CAUSE OF ACTION**

## **Infringement of U.S. Patent No. 7,452,916**

73. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs of this Complaint as if fully set forth herein.

74. Defendant has in the past literally and directly infringed or directly infringed under the doctrine of equivalents one or more claims of United States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused products, or any one of those products.

75. In addition to the fact that Defendant uses, sells, and offers for sale the accused products, and did so in the past, further examples of Defendant's direct infringements include, without limitation, the fact that Defendant encouraged and/or is aware of the fact that its employees, agents, representatives and other persons sponsored by or who endorse Defendant and Defendant's products in advertising and marketing activities orally administer the accused products and practice the methods disclosed in one or more claims of United States Patent No. 7,452,916, and these employees, agents, representatives and other persons

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1 sponsored by or who endorse Defendant and Defendant's products in advertising  
2 and marketing activities acted under Defendant's direction and control when  
3 practicing those methods.

4       76. Defendant encouraged and was aware of these persons' oral  
5 administration of the accused products for these purposes, these persons are acting  
6 under Defendant's direction and control, and therefore Defendant directly practiced  
7 the methods disclosed in United States Patent No. 7,452,916.

8       77. End-users of Defendant's accused products were also direct infringers  
9 of one or more claims of United States Patent No. 7,452,916.

10      78. End-users of Defendant's accused products have taken, used, and  
11 orally administered the accused products.

12      79. The accused products were shipped, distributed, advertised, offered for  
13 sale, and sold by Defendant to include certain ingredients that, by virtue of their  
14 inclusion in the products, infringed one or more claims of United States Patent No.  
15 7,452,916.

16      80. The accused products were shipped, distributed, advertised, offered for  
17 sale, and sold by Defendant to include specific ingredients for purposes that, by  
18 their inclusion in the products for such purposes, infringed one or more claims of  
19 United States Patent No. 7,452,916, and as a result, when end-users of Defendant's  
20 accused products orally administered the accused products, they were practicing the  
21 methods disclosed in one or more claims of that patent.

22      81. Defendant's labels and advertising for the accused products explained  
23 the elements and essential elements of the methods disclosed in United States  
24 Patent No. 7,452,916, and those labels and advertising statements encouraged,  
25 urged, and induced the accused products' end-users to purchase and orally ingest  
26 the products to practice those methods, and end-users did practice those methods.

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1       82. Defendant therefore specifically intended to cause these end-users to  
2 directly infringe the claimed methods of United States Patent No. 7,452,916, and  
3 had in fact urged them to do so.

4       83. The accused products were not suitable for non-infringing uses, and  
5 none of Defendant's labels or advertisements for the accused products disclosed  
6 any uses for the products, nor for the compounds disclosed in the claimed methods,  
7 that did not infringe upon such methods.

8       84. The inclusion of these specific infringing compounds in the products  
9 was material to practicing such methods.

10      85. Defendant had knowledge that the accused products were especially  
11 adapted by end-users of the products for the practicing of such methods, and,  
12 indeed, Defendant encouraged, urged, and induced the accused products' end-users  
13 to purchase and orally administer the accused products to practice such methods.

14      86. Defendant intentionally and knowingly induced, encouraged, and  
15 urged end-users of the accused products to purchase and orally administer the  
16 accused products for the purposes disclosed in one or more claims of United States  
17 Patent No. 7,452,916, by having them orally ingest the compounds disclosed in  
18 such claims.

19      87. Defendant had knowledge of the fact that the accused products,  
20 particularly as administered, infringed on one or more claims of United States  
21 Patent No. 7,452,916.

22      88. Defendant also had direct, firsthand knowledge of United States Patent  
23 No. 7,452,916 itself.

24      89. Defendant's activities were without express or implied license by  
25 Plaintiff.

26      90. As a result of Defendant's acts of infringement, Plaintiff suffered and  
27 will continue to suffer damages in an amount to be proved at trial.

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1       91. Defendant's past infringements and/or continuing infringements have  
2 been deliberate and willful, and this case is therefore an exceptional case, which  
3 warrants an award of treble damages and attorneys' fees in accordance with 35  
4 U.S.C. § 285.

## **VII. FOURTH CAUSE OF ACTION**

## **Infringement of U.S. Patent No. 6,117,872**

7       92. Plaintiff repeats and re-alleges the allegations of the foregoing  
8 paragraphs of this Complaint as if fully set forth herein.

9        93. Defendant has in the past and still is literally and directly infringing or  
10 directly infringing under the doctrine of equivalents one or more claims of United  
11 States Patent No. 6,117,872 by making, using, selling, and offering for sale the  
12 accused products, or any one of those products, and will continue to do so unless  
13 enjoined by this Court.

14        94. In addition to the fact that Defendant uses, sells, and offers for sale the  
15 accused products, further examples of Defendant's direct infringements include,  
16 without limitation, the fact that Defendant has encouraged and/or is aware of the  
17 fact that its employees, agents, representatives and other persons sponsored by or  
18 who endorse Defendant and Defendant's products in advertising and marketing  
19 activities orally administer the accused products and practice the methods disclosed  
20 in one or more claims of United States Patent No. 6,117,872, and these employees,  
21 agents, representatives and other persons sponsored by or who endorse Defendant  
22 and Defendant's products in advertising and marketing activities are acting under  
23 Defendant's direction and control when practicing those methods.

24        95. Defendant has encouraged and is aware of these persons' oral  
25 administration of the accused products for these purposes, these persons are acting  
26 under Defendant's direction and control, and therefore Defendant is directly  
27 practicing the methods disclosed in United States Patent No. 6,117,872.

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1       96. End-users of Defendant's accused products are also direct infringers of  
2 one or more claims of United States Patent No. 6,117,872.

3       97. End-users of Defendant's accused products have taken, used, and  
4 orally administered the accused products.

5       98. The accused products are shipped, distributed, advertised, offered for  
6 sale, and sold by Defendant to include certain ingredients that, by virtue of their  
7 inclusion in the products, infringe one or more claims of United States Patent No.  
8 6,117,872.

9       99. The accused products are shipped, distributed, advertised, offered for  
10 sale, and sold by Defendant to include specific ingredients for purposes that, by  
11 their inclusion in the products for such purposes, infringe one or more claims of  
12 United States Patent No. 6,117,872, and as a result, when end-users of Defendant's  
13 accused products orally administer the accused products, they are practicing the  
14 methods disclosed in one or more claims of that patent.

15      100. Defendant's labels and advertising for the accused products explain the  
16 elements and essential elements of the methods disclosed in United States Patent  
17 No. 6,117,872, and those labels and advertising statements encourage, urge, and  
18 induce the accused products' end-users to purchase and orally ingest the products to  
19 practice those methods, and end-users do practice those methods.

20      101. Defendant has therefore specifically intended to cause these end-users  
21 to directly infringe the claimed methods of United States Patent No. 6,117,872, and  
22 has in fact urged them to do so.

23      102. The accused products are not suitable for non-infringing uses, and  
24 none of Defendant's labels or advertisements for the accused products disclose any  
25 uses for the products, nor for the compounds disclosed in the claimed methods, that  
26 do not infringe upon such methods.

27      103. The inclusion of these specific infringing compounds in the products is  
28 material to practicing such methods.

1       104. Defendant has knowledge that the accused products are especially  
2 adapted by end-users of the products for the practicing of such methods, and  
3 indeed, Defendant encourages, urges, and induces the accused products' end-users  
4 to purchase and orally administer the accused products to practice such methods,  
5 and have done so in the past.

6       105. Defendant has intentionally and knowingly induced, encouraged, and  
7 urged end-users of the accused products to purchase and orally administer the  
8 accused products for the purposes disclosed in one or more claims of United States  
9 Patent No. 6,117,872, by having them orally ingest the compounds disclosed in  
10 such claims.

11       106. Defendant has knowledge of the fact that the accused products,  
12 particularly as administered, infringe on one or more claims of United States Patent  
13 No. 6,117,872.

14       107. Defendant also has direct, firsthand knowledge of United States Patent  
15 No. 6,117,872.

16       108. Defendant's activities have been without express or implied license by  
17 Plaintiff.

18       109. As a result of Defendant's acts of infringement, Plaintiff has suffered  
19 and will continue to suffer damages in an amount to be proved at trial.

20       110. As a result of Defendant's acts of infringement, Plaintiff has been and  
21 will continue to be irreparably harmed by Defendant's infringements, which will  
22 continue unless Defendant is enjoined by this Court.

23       111. Defendant's past infringements and/or continuing infringements have  
24 been deliberate and willful, and this case is therefore an exceptional case, which  
25 warrants an award of treble damages and attorneys' fees in accordance with 35  
26 U.S.C. § 285.

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28       ///

## **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for entry of judgment against Defendant as follows:

1. A declaration that Defendant has infringed the patents in suit, under 35 U.S.C. §§ 271 *et seq.*;

2. That injunctions, preliminary and permanent, be issued by this Court restraining Defendant, its officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from directly or indirectly infringing, or inducing or contributing to the infringement by others of, United States Patent No. 6,117,872;

3. That Defendant be required to provide to Plaintiff an accounting of all gains, profits, and advantages derived by Defendant's infringement of the patents in suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

4. That the damages awarded to Plaintiff with regard to the patents in suit be increased up to three times, in view of Defendant's willful infringement, in accordance with 35 U.S.C. § 284;

5. That this case be declared to be exceptional in favor of Plaintiff under 35 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and other expenses incurred in connection with this action;

6. That Plaintiff be awarded its interest and costs of suit incurred in this action;

## 7. Compensatory damages;

**8. Punitive damages; and**

9. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

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1                           **DEMAND FOR JURY TRIAL**

2                           Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands  
3 a jury trial for all issues in this case that properly are subject to a jury trial.

4  
5 DATED: September 12, 2013

HIDEN, ROTT & OERTLE, LLP

6  
7 By:

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Eric M. Overholt, Esq.  
*Attorneys for Plaintiff*

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